

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 00-319

Supreme Court No.: SC00-2510

JUDGE BAKER'S RESPONSE TO REQUEST TO PRODUCE

Introductory Statement

Judge Baker, as the subject of inquiry before the Florida Judicial Qualifications Commission, is quite willing to comply with its rules and directives, including these discovery requests. Even so, counsel for Judge Baker must preserve our legal objection to the constitutionality of the proceedings and procedures in order that compliance will not be considered a waiver of constitutional arguments. Although due process concerns have been raised and addressed by the Florida Supreme Court in prior JQC proceedings, the issues below have not been ruled upon by that court. *See In re: Graziano*, 696 So. 2d 714 (Fla. 1997); *In re: Graham*, 620 So. 2d 1273 (Fla. 1995).

To meet the requirements of due process under the Fourteenth Amendment to the United States Constitution, proceedings against individuals to deprive them of significant, valuable rights and property must provide fundamental fairness, which requires a fair trial or hearing. That can only occur before some sort of fair tribunal.

Powell v. Alabama, 287 U.S. 45 (1932). These Constitutional requisites apply to administrative bodies. *Schweiker v. McClure*, 456 U.S. 188 (1982), *Gibson v. Berryhill*, 411 U.S. 564 (1973), *In re: Murchison*, 249 U.S. 133 (1955).

The Florida JQC is not a judicial or quasi-judicial body. Under Article V, §12, of the Florida Constitution, the Judicial Qualifications Commission is created and “vested with jurisdiction to investigate and recommend to the Supreme Court of Florida.” Investigating and recommending are not judicial or quasi-judicial functions. They are inquisitorial.

The JQC has divided itself into two panels. One is denominated the “Investigative Panel” and the other is called the “Hearing Panel.” This, and the adoption of rules regarding evidence, motion practice and the Florida Rules of Civil Procedure give the impression of a judicial or quasi-judicial hearing. However, as noted before, the only authority the JQC has is to “investigate and recommend.” Therefore, the JQC has simply divided itself into two investigative panels, rather than one. The separation into two panels has no function in protecting due process rights.

Application of Florida JQC procedures provide an illustration that these proceedings are not judicial or quasi-judicial and are subject to Constitutional challenge. Discovery requests such as interrogatories, for example, under Fla. R. Civ. P. 1.340, must be answered by Judge Baker as the party to whom they are directed. However, there is only one party to the proceeding. If the Florida JQC considers itself

a party, it is both party and the body hearing the case, which belies the separation into investigative panel and hearing panel and belies its being a constitutional tribunal. If it is not a party, then there is only one party, and this is contrary to the assumption of the Florida Rules of Civil Procedure that they are applied to litigation in the common law model of two or more litigant adversaries. In this regard, it must be noticed that the Interrogatories submitted by Judge Baker were signed by counsel for the Florida JQC, which is not permitted under Fla. R. Civ. P. 1.340.

Fla. R. Civ. P. 1.380 provides sanctions. Under these a judge stands to have pleadings stricken, face fines and imprisonment and be removed from office. Sanctions are completely one-sided. If the Florida JQC is not a party, there is nobody to sanction but the judge. If the Florida JQC deems itself a party, then it must sanction itself. This does not meet Constitutional due process muster.

Response to Request to Produce

Judge Baker hereby responds to the Request to Produce propounded by the Judicial Qualifications Commission, as follows:

1. The referenced letters were not kept by Judge Baker and were a part of the court file, which has been purged and is accessible now only on microfiche.
2. Judge Baker did not keep a written record or copy of his research.
3. Please refer to Judge Baker's pre-hearing disclosure for a list of the documents we anticipate offering into evidence at the hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the a copy of the foregoing has been furnished by U.S. Mail to *Judge James Jorgenson*, Chairman of JQC Hearing Panel, The Historic Capitol, Room 102, Tallahassee, FL 32399-60000; *Thomas C. MacDonald, Jr., Esquire*, General Counsel to JQC, 100 N. Tampa Street, Suite 2100, Tampa, FL 33602; *Brooke S. Kennerly*, Executive Director, Florida JQC, 400 S. Monroe, Old Capitol, Room 102, Tallahassee, FL 32399; *John R. Beranek, Esquire*, Counsel to the JQC Hearing Panel, P.O. Box 391, Tallahassee, FL 32302-0391; and *Charles P. Pillans III, Esquire*, The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202, this 5th day of April, 2001.

David B. King
Florida Bar No. 0093426
Mayanne Downs
Florida Bar No. 754900
KING, BLACKWELL & DOWNS, P.A.
25 East Pine Street
Post Office Box 1631
Orlando, Florida 32802-1631
Facsimile: (407) 648-0161
Telephone: (407) 422-2472

Attorneys for Joseph P. Baker